Post-Hearing Questions for the Record Submitted to Michael Graham From Senator Claire McCaskill

"Contract Management by the Department of Energy" June 27, 2013

- 1. The Department of Energy has been on GAO's high risk list for its contract management for over 20 years. The Department's projects have had chronic cost overruns and schedule delays.
 - Q: What do you think the impact of bringing more oversight to the management of your contracts would be?

EM contracts already involve multiple layers of oversight. Oversight more closely coordinated with project objectives could improve capital project outcomes.

Q: Would it be worthwhile for the Department to obtain more independent cost estimates of its projects?

Independent Government Cost Estimates (ICEs) are an important tool that should be, and have been employed in the capital project management process. With regard to the WTP project, the Department had an ICE prepared that served as the foundation of the initial contract price and subsequently employed the Corps of Engineers to prepare an ICE when the project was rebaselined in 2006.

Q: Have you ever felt any pressure, direct or indirect, from the Department to keep cost estimates or bids beneath what you felt the true cost of the project would be?

We have worked closely with the Department regarding development of project baselines for the projects on which we work and have, in accordance with DOE Order 413, always sought to assure that the management reserve held by the contractor and the contingency held by the Department reflected an appropriate estimate of project costs.

- 2. It appears that Environmental Management (EM) contractors cooperate as much with other firms on joint ventures as much as they compete with them for contracts. The industry has coined a term, "competimates," to describe this relationship.
 - Q: Why shouldn't this level of cooperation raise eyebrows among taxpayers who expect strong competition between contractors?

In most cases, a single contractor organization does not have the requisite skills and experience to provide best value to the government for the wide range of tasks involved in major EM activities. Teaming with other contractors allows EM to obtain the best talent most efficiently. EM obtains the benefits of competition in the contracting phase when various contractor teams compete against each other for the business. We believe that DOE receives the benefit of strong competition as a result of these arrangements.

The Department is moving to first consider firm-fixed-price contracts in the future, rather than the cost-plus contracts in use today.

Q: Would you have bid on a firm-fixed-price contract on any of your current major EM projects?

Yes, if properly structured to provide the contractor a firm basis for preparing its price. However, with the unknowns associated with many of these projects at the outset, it would have been difficult to properly structure such a contract for our current projects for EM. In this regard, we note that Performance of the Defense Acquisition System, 2013 Annual Report. Washington, DC: Office of the Under Secretary of Defense, Acquisition, Technology and Logistics, 2013, dated June 28, 2013, recently concluded among other things that the fixed priced type of contract is not necessarily better at controlling cost growth.

Q: Is EM realistic in considering firm-fixed-price contracts for remediation work?

Firm fixed price (FFP) work must be clearly scoped. Remediation work can involve many unknown elements. The greater the uncertainty, the less appropriate it is to use the FFP contracting model.

3. Part of the reason the Waste Treatment Plant has incurred significant cost overruns is because designs and plans related to safety were incorporated only after construction had begun.

This statement is inaccurate. There has been cost growth as a consequence of changes to scope and funding which are different than a cost overrun. Design was initiated with safety criteria based on known industry practice and government-provided information on waste feed. That information has been revised over time. In establishing the contract structure, DOE determined that a design-build program was the only approach that had the possibility of meeting the Department's binding commitments to the State of Washington. The design-build approach has an acknowledged risk of cost growth if changes are made.

Q: Do you think some of these safety issues could have been addressed sooner and at lower cost if the Defense Nuclear Facilities Safety Board ("Safety Board") had been included earlier in the process?

We know of no impediments to DNFSB's participation in the development of the WTP.

According to the GAO, since 2009, Bechtel has been awarded \$15.6 million in incentive fees just for meeting schedule and cost goals, even though the Waste Treatment Plant's schedule has slipped and construction costs have increased.

Q: How did Bechtel justify the receipt of these incentive fees despite the cost overruns and schedule slippages of the Waste Treatment Plant?

We believe that the fees at issue had been earned relative to the criteria in the contract. Since 2009, until the Department decided to place part of the project on hold in 2012, WTP project performance has been on schedule and on cost. The Department awarded fee to Bechtel based on its determination of contract performance based on criteria that were

added to the contract in 2009. Scope growth beyond the bounds of the contract, funding inconsistencies, delays, and reevaluation of technical decisions have resulted in cost growth and schedule extension.